IN THE

Supreme Court of the United States

OCTOBER TERM, 1951

No. 224

PUBLIC UTILITIES COMMISSION OF THE DISTRICT OF COLUMBIA, CAPITAL TRANSIT COMPANY, AND WASHINGTON TRANSIT RADIO, INC., *Petitioners*,

v.

FRANKLIN S. POLLAK AND GUY MARTIN, *Respondents*.

No. 295

FRANKLIN S. POLLAK AND GUY MARTIN, *Petitioners*,

v.

PUBLIC UTILITIES COMMISSION OF THE DISTRICT OF COLUMBIA, CAPITAL TRANSIT COMPANY, AND WASHINGTON TRANSIT RADIO, INC., *Respondents*.

On Writs of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

OBJECTION TO MOTION FOR LEAVE TO FILE A BRIEF AS *AMICI CURIAE*.

Franklin S. Pollak and Guy Martin, respondents in No. 224 and petitioners in No. 295, object to the motion of Radio Cincinnati, Inc., KXOK, Inc., and KCMO Broadcasting Company for leave to file a brief as *amici curiae* urging reversal of the decision of the Court below.

1. The motion does not allege any reason for believing that any fact or question of law will not be adequately presented by the parties here and it contains nothing which would support that allegation, had it been made. In particular, the motion does not suggest that the petitioners in No. 224 (respondents in No. 295) are not represented by competent counsel fully qualified to present all relevant questions of fact or law. Rule 27, ¶9(c); *Northern Securities Company* v. *United States*, 191 U. S. 555.

2. The allegation that a decision by this Court in this case "will have direct implications" on the rights of the moving parties is one that can be made with equal truth by one person or many in innumerable cases in this Court. It cannot be sufficient under Rule 27, ¶9(c), if that provision is to have any real effect.

3. The statement in the motion that the due process clauses of the Fifth and Fourteenth Amendments are "similar" and the questions under them "closely related" is nothing more than a step toward the conclusion that the moving parties will be effected by the Court's decision here, which is not enough. The intimation, if there is one, that in substance the two clauses are also relevantly different is even further from meeting the requirements of the Rule, because if that is true the effect of this case on the moving parties will have to be settled in another case and they are not entitled to argue differences here.[1]

4. The granting of leave to file a brief *amicus curiae* to any of the present moving parties would as a matter of precedent suggest that the same opportunity should be

[1] The moving parties state in substance (paragraph 3) that they should be given an opportunity to show the bearing of this case "on their rights and on the rights of millions of bus riders throughout the country" *under the Fourteenth Amendment* because "the petitioners . . . are concerned *only* with rights and interests of District of Columbia bus riders under the *Fifth Amendment*". (Italics ours)

given to more than twenty other corporations with equivalent status. In addition to Cincinnati, St. Louis and Kansas City, there are similar transit radio operations in nine other cities,[2] each involving an FM broadcasting station and a transportation company, each of whom, plus the transportation companies in the cities of the present moving parties, would be equally entitled to file briefs.

5. We believe that ¶9(c) of Rule 27 was adopted for the protection of litigants as well as for the protection of the Court. One of its purposes, plainly, is to protect litigants from having to deal with numerous briefs presented by persons not parties except in the situation which is expressly specified—namely, when relevant questions of fact or law will not be adequately presented by the parties themselves. Because we believe that that situation does not exist here we have refused our consent under Rule 27 and now object to the motion.

Respectfully submitted,

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November 27, 1951.

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[2] The latest data available to us show that transit radio is in operation in thirteen cities, including Washington (Broadcasting Marketbook, August 20, 1951, page 8E).